

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In re Personal Restraint Petition of:

Case No. **41505-4**
PERSONAL RESTRAINT PETITION
DANIEL RAYMOND LONGAN,
Petitioner.

If there is not enough room on this form, use other pages and write "See Attached." Fill out this entire form before you sign this form in front of a notary public (free in the law library).

A. STATUS OF PETITIONER

I, DANIEL RAYMOND LONGAN 827885 STAFFORD CREEK CORRECTIONS
(Full name and current address)
CENTER 191 CONSTANTINE WAY ABERDEEN WA, 98520

apply for relief from confinement. **I am** now in custody serving a sentence on conviction of a crime. I am now in custody because of a *Judgment and Sentence*.

1. The court in which I was sentenced is: Cowlitz County Superior Court.

2. I was convicted of the crime(s) of: 1st degree asslt w/firearm x3
2nd degree TMVWOP w/firearm, attempt to elude w/firearm.

3. I was sentenced after (check on) Trial ☒ Plea of Guilty ☐ on 6/24/08.
(Date of sentence)

4. The Judge who imposed sentence was 480 months.

5. My lawyer at trial court was THOMAS LEDOUCEUR
(Name and address if known)

COWLITZ COUNTY OFFICE OF PUBLIC DEFENSE 1801 first ave
Longview Wa, 98632

6. I did x did not _____ appeal from the decision of the trial court. (If I did appeal:),

I appealed to: DIVISION II COURT OF APPEALS
(Name of court or courts to which appeal took place)

7. My lawyer for my appeal was: CATHERINE E. GLINSKI P.O. BOX 761
MANCHESTER WA, 98353

The decision of the appellate court was _____ was not x published. (If the answer is that it *was* published, and I have this information) the decision is published in _____

8. Since my conviction I have x have not _____ asked a court for some relief from my sentence other than I have already written above. (If the answer is, I have asked the court I asked was WASHINGTON SUPREME COURT. Relief was denied on

(Name of court)
MARCH 30, 2010

(Date of Decision or, if more than one, all dates)

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was NONE

(Name and address if known)

9. If the answers to the above questions do not really tell about the proceedings and the

courts, judges and attorneys involved in your case, tell about it here: The order

denying motin to reconsider was filed OCTOBER 20th 2009

In this order it was stated that " Upon review we deny this

motion for reconsideration as the only potential issue raised

is more appropriatly brought as a Personal Restaint Petition."

B: GROUNDS FOR RELIEF:

I claim to have 9 reasons for this court to grant me relief from the convictions and sentence described in part A.

First ground

1.) I should be given a new trial or released from confinement because: The trial court errored when it failed to perform a Bone-Club analysis or its equivalent before closing a portion of the trial Voir Dire to the public. Thereby violating U.S. Const. Amends. 5, 6, & 14, Wash. Const. Art. I. Sect. 3, 10, & 22

2.) The following facts are important when considering my case: The Court of Appeals decision in which it said that they denied my appeal, because "the only potential issue raised is more properly brought as a Personal Restraint Petition." (see app. A the order denying motion for reconsideration dated Oct. 20th, 2009). Also there are several affidavits from the following people which will support the argument that there was a structural error of constitutional magnitude made by the court when it failed to perform a Bone-Club analysis or its equivalent. Jennifer Journet, Patricia Bird-Hoffman, Victoria Ong, Kathrine Hoffman, & Daniel Longan. (see app. B, C, D, E, & F)

3.) The following reported court decisions in cases similar to mine show the error I believe happened in my case: In Re of Orange, 152wn.2d 795, 100p.3d 291(2004), Presley V. Georgia, U.S., 130 S. Ct. 721, 175L.Ed.2d 675(2010), State V. Bone-Club, 128wn.2d 254 258-59, 906 P.2d 325 (1995), State V. Brightman, 155wn. 2d 506, 514, 122 P.3d 150 (2005), State V. Bowen No. 39096-5-II (Wash. App. Div. II 7/20/10), State V. Duckett, 141wn.App. 797, 173 P.3d 948(2007), State V. Easterling, 157wn.2d, 167 174, 137p.3d 825 (2006), State V. Frawley, Wn.App. 167p.3d, 593 (2007), State V. Heath, Coa. No. 36885-4-II May 12, 2009, State V. Paumier, 155 Wn. App. 673 (Div. II 2010), State V. Strode, 167Wn.2d(2009), State V. White, No. 25578-6-III.

4.) The following statutes and constitutional provisions should be considered by the court in my case:

United States Constitution Sixth Amendment
Washington Constitution Article I, Section 22
Washington Constitution Article I, Section 10

5.) This Petition is the best way that I know know to get the relief I want, And no other way will work as well because this is the next step to take in the correct legal process, and no other way will get the appropriate legal results.

Second Ground

1.) I should be given a new trial or released from confinement because my trial counsel was ineffective for failing to object to the lack of a Bone-Club analysis or its equivalent which resulted in a violation of my public trial rights.

2.) The following facts are important when considering my case : The several affidavits from the following people; Jennifer Journet, Patrica Bird-Hoffman, Victoria Ong, Katie Hoffman, and Daniel Longan. (see Appendix's B,C,D,E,F) all of which will support the arguement that there was structural error when the court failed to perform a Bone-Club analysis or its equivalent.

3.) The following reported court decisions
in cases similar to mine show the error

I believe happened in my case:

In Re of Orange, 152wn.2d 795, 100p.3d 291
(2004), Presley V. Georgia, U.S., 130 S.Ct.
721, 175L.Ed.2d 675(2010), State V. Bone-Club,
128wn.2d 254, 258-59, 906P.2d 325(1995),
State V. Bowen, Coa. No. 39096-5-II
(Wash. App. Div. II 7/20/10), State V.
Brightman, 155wn.2d 506, 514, 122 P.3d 150
(2005), State V. Easterling, 157wn.2d, 167
174, 137p.3d 825 (2006), State V. Frawley,
Wn.App.167p.3d 593(2005), State V. Heath,
Coa.No. 36885-4-II, May 12, 2009,
State V. McFarland, 127wn.2d 322, 335, 899
p.2d 1251(1995), State V. Paumier, 155wn.
app.673 (Div.II 2010), State V. Strode,
167wn.2d(2009), State V. White, No.25578-6
-III, Strickland V. Washington, 466U.S..
682, 689, 104 S.Ct. 2052, 80 Ed.2d 64 (1984).

4.) The following statutes and constitutional
provisions should be considered by the
court in my case:

United States Constitution Sixth Amendment
Washington Constitution Article I, Section 22
Washington Constitution Article I, Section 10

5.) This is the best way that I know how to get the relief I want, and no other way will work as well because this is the next step to take in the correct legal process, and no other way will get the appropriate legal results.

Third Ground

1.) I should be given a new trial or released from confinement because my trial counsel was ineffective for failing to make it known to the jury that there were pictures of taken by the police of the car I was driving that showed bullet holes in the truck that couldn't have come from my co-defendant, and were unexplained by the police. Which shows he failed to investigate before trial all the evidence.

2.) The following facts are important when considering my case: The photo's taken by the police which are a part of the evidence they obtained but was not submitted for the court and jury to see at trial. (see App. G). The affidavit from Daniel Longan. (see App. F)

3.) The following reported court decisions in cases similar to mine show the error I believed happened in my case: State V. Mcfarland, 127wn.2d, 322,334-35,899 p.2d 1251(1995); Hearing V.New York, 422 U.S. 853,862,95 S.Ct. 2550 (1975); Strickland V. Washington,446 U.S. 682, 689, 104 S.Ct. 2052, 80 Ed.2d 64(1984); Wiggins V. Smith,539 U.S. 510, 521 (2003); Porter V. Mccullum,588 U.S. __,(2009) Rampilla V. Beard,545 U.S. 374,387(2005);Willams V. Taylor, 529 U.S.362,396(2000); Goodwin V. Balcom, 684F.2d 794 804-05 (11thCir 1982); United States V. Porterfield, 624 F.2d 122 124 (10th Cir 1980); United States V. Tucker,716 F.2d 576 Versus Law ¶336 (9th Cir1983).

4.) The following statutes and constitutional provisions should be considered by the court: Criminal Law 641.13 (1) United States Constitutional Amendment 6

5.)This is the best way that I know how to get the relief that I want, and no other way will work as well because this is the next step to take in the correct legal process, and no other way will get the appropriate legal results.

Fourth Ground

1.) I should be given a new trial or released from confinement because my trial counsel was ineffective for failing to retain and present relevant medical records vital to the defense showing that I was stabbed and giving insight into why I was wearing the protective vest.

2.) The following are important when considering my case. The affidavits from the following people; Jennifer Journet, Patricia Bird-Hoffman, Victoria Ong, Katie Hoffman and myself. (see Appendix's B,C,D,E,F)

3.) The following reported court decisions in cases similar to mine show the error I believe happened in my case:
State V. McFarland, 127 Wn.2d, 322, 344-35, 899p.2d1251(1975)
Wiggins V. Smith, U.S. 510 526 (2003), Kitchen V. United States, 227 F.3d 1014(7th Cir 2000); Strickland V. Washington, 466 U.S. 682, 689 104 S.Ct. 2052, 80 Ed.2d 64 (1984);

4.) The following statutes and constitutional provisions should be considered by the court: Criminal Law 641.13(1)
United States Constitutional Amendment 6

5.) This is the best way that I know how to get the relief that I want, and no other way will work as well because this is the next step to take in the correct legal process, and no other way will get the appropriate legal results.

Fifth Ground

- 1.) I should be given a new trial or released from confinement because my trial counsel was ineffective for failing to allow me to testify in my own defense.
- 2.) The following facts are important when considering my case: The affidavits from Jennifer Journet, Patrica Bird-Hoffman, Victoria Ong, Katie Hoffman, and Myself. (see appendix's B,C,D,E,F)
- 3.) The following reported court decisions in cases similar to mine show the error I believed happened in my case: State V. Mcfarland, 127wn.2d 322,334-45, 899p.2d(1975); State V. King, 24 Wash.App. 495,499 601 p.2d 982(1979); U.S. V. Teague, 953 F.2d 1525 1532-35, (11th Cir) cert. denied, 113 S.Ct. 127(1992)(en banc); State V. Robinson, 138 wn.2d 753, 764, 982P.2d 590(1990); Strickland V. Washington, 466 U.S. 682,689 104 S.Ct. 2052, 80 Ed.2d 64 (1984).
- 4.) The following statutes and constitutional provisions should be considered by the court: U.S. Const. Amend. 5,6, 14; Wash.Const. Art. I, Section 22.

5.) This is the best way I know to get the relief I want, and no other way will work as well because this is the next step to take in the correct legal process, and no other way will get the appropriate legal results.

Sixth Ground

1.) I should be given a new trial or released from confinement because my trial counsel was ineffective for failing to contact or investigate possible defense witnesses on my behalf.

2.) The following facts are important when considering my case; The affidavits from the following people ; Jennifer Journet, Patrica Bird-Hoffman, Victoria Ong, Katie Hoffman and myself.(see appendix's B,C,D,E,F)

3.) The Following reported court decisions in cases similar to mine show the error I happened in my case:
State V. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d (1975);
Herring V. New York, 422 U.S. 853, 862, 95 S.Ct. 2550 (1975);
Strickland V. Washington, 446 U.S. 682, 689 104 S.Ct. 2052, Ed.2d 64 (1984); Wiggins V. Smith, 539 U.S. 510, 521 (2003); Ripley V. Payne, 352 F.3d 1313, 1324 (7th Cir 2003)

Reynoso V. Giurbino, 462 F.3d 1099 Versus Law ¶ 69 (9th Cir 2006); Goodwin V. Balcom, 684 F.2d 794, 804-05 (11th Cir 1982); United States V. Porterfield, 624 F.2d 122, 124 (10th Cir 1980); United States V. Tucker, 716 F.2d 576, Versus Law ¶ 36 (9th Cir 1983).

4.) The following statutes and constitutional provisions should be considered by the court: U.S. Const. Amend. 5, 6, 14; Wash. Const. Art. I § 22.

5.) This is the best way I know to get the relief I want, and no other way will work as well because this is the next step to take in the correct legal process, and no other way will get the appropriate legal results.

Seventh Ground

1.) I should be given a new trial or released from confinement because the Prosecutor is guilty of misconduct because she failed to provide me with a plea agreement more exceptable and closely suited to my codefedants plea of 15 years.

2.) The following facts are important when considering my case; My affidavit, (see appedix F), The emails between my counsel and the prosecutor,(see appendix G-I)The only plea agreament offered by the prosecutor.(see appendix J), The news articles which refur to the drastic difference in treatment in which my co-defendant was allowed 3 hours by the trial judge during sentancing on her plea agreament for her family and friends to speak on her behalf with the judge.(See appendix K)

3.) The following reported court decisions in cases similar to mine show the error I believed happened in my case:
U.S. V. Estrada-Plata, 57F.3d, 757(9th Cir 1995);
U.S. V. Wayte, 710 F.2d, 1385, 1387(9th Cir 1983).
Yick Wo V. Hopkins, 118 U.S. 356,369 (1970)

4.) The following statutes and constitutional Provisions should be considered by the court: U.S. Const. Amend. 8,14

5.) This is the best way I know how to get the relief I want, and no other way will work as well because this is the next step to take in the correct legal process, and no other way will get the appropriate leagl results.

Eighth Ground

1.) I should be given a new trial or released from confinement because: The trial court erred when it unlawfully instructed the jury it had to unanimously agree to decide the defendant was not guilty in the special verdict instructions.

2.) The following facts are important when considering my case: The fact that the case law applied here was unavailable to be use before thus it creates an interest in justice represented in Rap 16.4 (b) (3). Also see the appendix's L through N. Which show the jury instructions that are in error, and the questions posed to the judge showing doubt about their ability to answer "yes " to the special verdict forms.

3.) The following reported court decisions in cases similar to mine show the error I believed happened in my case: State V. Stephen, 93 Wn.2d 186, 190, 907 P.2d 304(1980) State V. Goldberg, 149Wn.2d 888, 892, 72P.3d 1083(2003), State V. Bashaw, No 81633-6(july 1st 2010)

4.) The following Constitutional provisions should be considered by the the court:

5.) This petition is the best way I know to get the relief I want, and no other way will work as well because this is the next step to take in the correct legal process, and no other way will get the appropriate legal results.

Ninth Ground

1.) I should be given a new trial or released from confinement because of the cumulative effect of all of the errors in my case.

2.) The following facts are important when considering my case: There was a tremendous amount of errors in my trial and several were constitutional magnitude errors.

3.) The following reported court decisions in cases similar to mine show the error I believed happened in my case:

State V. Coe, 101Wn.2d 712, 789, 684P.2d 668(1989).

State V. Griefff, 141Wn.2d 910, 929, 10P.3d, State V. Alexander

64Wn.App. 147, 158, 822P.2d 1250 (1992), Chambers V.

Mississippi, 410 U.S. 284(1973).

4.) The following states and constitutional provisions should be considered by the court: U.S. Const.Amend. VI.

5.) This petition is the best way I know to get the relief I want, and no other way will work as well because this is next legal step to take in my appeal to get the appropriate legal results.

C. STATEMENT OF FINANCES:

I cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help me fill out this form. I have attached a certified copy of my prison finance statement (trust account).

1. I do X do not ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.
2. I have \$ in my prison or institution account. (Attach **certified** six month statement of inmate trust account, available from inmate accounting.)
3. I do X do not ask the court to appoint a lawyer for me.
4. I am am not X employed. My salary or wages amount to \$ a month. My employer is:

(Name and address of employer)

5. During the past 12 months I did did not X get any money from a business, profession or other form of self-employment. (If I did, I got a total of \$.)
6. During the past 12 months I:
Did did not X receive any rent payments. If so, the total I received was \$.
Did did not X receive any interest. If so, the total I received was \$.
Did did not X receive any dividends. If so, the total I received was \$.
Did did not X receive any other money. If so, the total I received was \$.
Did did not X have any cash except as noted in (C)(2) above. If I do, the total cash I have is: \$.
Did did not X have savings or checking account. If so, total in all accounts is \$.
Did did not X own stocks, bonds, or notes. If so, their total value is \$.
7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture, furnishings, and clothing which you or your family own.

Items

Value

NONE

8. I am am not X married. If I am, my wife or husband's name and address is:

II. DECLARATION / CERTIFICATION OF INDIGENCE

I, Daniel Raymond Longan, Appellant pro se, certify I am the Appellant in this action and I wish to appeal the judgment that was entered in the above entitled cause. I further certify as follows:

1. That I (☒) do not have any money in checking and/or savings accounts () I have \$ 00 grand total in all checking and savings accounts.
2. That I am: (☒) not married () married and my wife's monthly income is: \$ 0
3. That I own: (☒) No personal property other than my personal effects.
() Personal property (automobile, money, inmate account, motors, tools, etc) valued at \$ 0
(☒) No real property () Real property valued at \$ 0
() Stocks, bonds, notes, or other valuables (NOT furniture, clothes or household goods) worth: \$ 0
4. That I have the following income: (☒) No income from any source
() Income from **employment**, disability payments, SSI, insurance, annuities, stocks, bonds, interests, dividends, rental payments, etc., in the amount of \$ 0 on an average monthly basis.
I received \$ 0 after taxes over the past 12 months. The name and address of my employer is:
5. That I have: () No debts (☒) Debts in the total amount from all debts owed of \$ 15,000.00 +
6. I am without other means to prosecute an appeal and desire that public funds be expended for that purpose.
7. I can contribute the following amount toward the expense of review: \$ 00
8. The following is a brief statement of the nature of the case and the issue sought to be reviewed.

I am reviewing my current conviction. With the court of

Appeals.

9. I ask the court to provide the following at public expense: all filing fees, attorney fees, preparation, reproduction, and distribution of briefs, preparation of verbatim report of proceedings, and preparation of necessary clerk's papers.
10. I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.
11. I certify that I will immediately report any change in my financial status to the court.
12. I certify that review is being sought in good faith. I declare that all of the above is true and correct under penalty of perjury of the laws of the State of Washington.

Done this 26 day of November, 2010.

Petitioner may file the petition
without payment of a filing fee,

Signed: De 2

DOC #827885

Daniel Longan
Court Clerk

filing fee waive print name: Daniel Raymond Longan
01/31/11
dp
Stafford Creek Correction Center, Unit:
191 Constantine Way
Aberdeen, WA 98520

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
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NONE

10. All the bills I owe are listed here:

Name & Address of creditor	Amount
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About \$15,000 to Department of Corrections, and
KING, CLARK, and COWLITZ COUNTIES In the form of LFO's.

D. REQUEST FOR RELIEF:

I want this court to:

☒ Vacate my conviction and give me a new trial.

☐ Vacate my conviction and dismiss the criminal charges against me without a new trial.

☒ Other: Vacation of My Special Verdict from my Sentence
(Please specify)

E. OATH OF PETITIONER

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAY'S HARBOR)

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents and I affirm the contents of this petition are true and correct under penalty of perjury of the laws of the State of Washington.

(sign before a Notary)

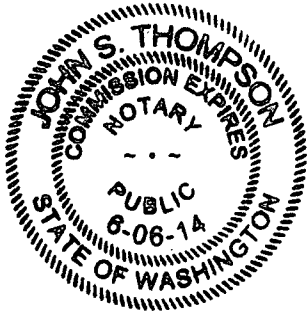
Daniel

Print name: DANIEL RAYMOND LONGAN

DOC # 827885

Stafford Creek Correction Center, Unit:
191 Constantine Way
Aberdeen, WA 98520

SUBSCRIBED AND SWORN to before me this 24 day of November, 2010.



John S. Thompson

Notary Public in and for the State of Washington
Residing at Gray's Harbor